D.B. CENTRAL EXCISE APPEAL NO.56/2006

UOI **Vs.** M/s S.P.B.L. Ltd. & Anr.

Date : 17.10.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. V.K. Mathur for the appellant.

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Heard learned counsel for the appellant.

The question relates to finding of fact whether the assessee-respondent has passed on the incidence of Duty to the buyer which was not otherwise chargeable so as to claim refund of the amount by the petitioner who has paid the duty.

The Tribunal has found that the assessee-respondent though initially had charged the extra Duty, which was not payable, in the invoice, but as soon as the mistake was pointed out by the respective buyers who had not paid the sum of additional duty charged and invoiced to such buyers to the respondent, he issued

credit notes to the buyers about additional Duty charged in the bills to be set off the outstanding shown in the accounts and the correspondingly buyers have debited the petitioner's account with such sum. Therefore, the Tribunal reached a finding of fact that assessee has not passed the actual duty to his buyers. Hence, his claim to refund cannot be denied under Section 11B of the Central Excise Act.

The facts about issue of credit note and setting off the excess Duty charged in invoice are not in dispute.

This being the position, we are of the opinion, that the finding of fact reached by the Tribunal in the peculiar facts and circumstances of the case does not give rise to any question of law.

The appeal is, accordingly, rejected.

[GOPAL KRISHAN VYAS], J. [ RAJESH BALIA ], J.

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